Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	Pursuant to Public Notice FCC-00J-3
	)	

COMMENTS OF QWEST CORPORATION ON THE RURAL TASK FORCE RECOMMENDATION

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November 3, 2000

SUMMARY

The Rural Task Force Recommendation concludes that the Synthesis Model is not an appropriate tool for determining the forward-looking costs of rural carriers, and accordingly recommends adoption of a "Modified Embedded Cost Mechanism" instead. While its repudiation of the Synthesis Model is warranted, the Rural Task Force inappropriately suggests that there would be no harm in leaving that malfunctioning mechanism in place for "non-rural" carriers. That is plainly wrong. Because "rural" and "non-rural" carriers are similarly situated in all relevant respects, using different cost models would be arbitrary and capricious. Therefore, the Commission should correct the flaws in the Synthesis Model, not exempt a privileged class of carriers from the model's distortive effects while keeping that model in place for other LECs.

Similarly, the Task Force's condemnation of statewide averaging of costs — on the ground that such averaging would result in the denial of support to many "rural" carriers — should lead to more granular cost averaging for "rural" and "non-rural" carriers alike, rather than a special exemption from statewide averaging for "rural" carriers. The prospect that statewide averaging would produce inadequate support for "rural" carriers already has become a reality for "non-rural" carriers such as Qwest that serve particularly high-cost rural areas. Accordingly, the Task Force's call to abandon statewide averaging for "rural" carriers and in turn create a fund of more than $1.5 billion cannot be justified if the Commission continues to use statewide averaging to hold down support for "non-rural" carriers.

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COMMENTS OF QWEST CORPORATION ON
THE RURAL TASK FORCE RECOMMENDATION

Qwest Corporation ("Qwest") respectfully submits these comments on the Rural Task Force Recommendation in the above-captioned docket.[1] The Recommendation concludes that the Synthesis Model is not an appropriate tool for determining the forward-looking costs of rural carriers, and accordingly recommends adoption of a "Modified Embedded Cost Mechanism" instead. While its repudiation of the Synthesis Model is warranted, the Rural Task Force ("Task Force") inappropriately suggests that there would be no harm in leaving that malfunctioning mechanism in place for "non-rural" carriers. That is plainly wrong. Because "rural" and "non-rural" carriers are similarly situated in all relevant respects, using different cost models would be arbitrary and capricious. Therefore, the Commission should correct the flaws in the Synthesis Model, not exempt a privileged class of carriers from the model's distortive effects while keeping that model in place for other LECs.

Similarly, the Task Force's condemnation of statewide averaging of costs — on the ground that such averaging would result in the denial of support to many "rural" carriers — should lead to more granular cost averaging for "rural" and "non-rural" carriers alike, rather than

[1] *See Federal-State Joint Board on Universal Service*, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (rel. Sept. 29, 2000) (the "Recommendation").

a special exemption from statewide averaging for "rural" carriers. The prospect that statewide averaging would produce inadequate support for "rural" carriers already has become a reality for "non-rural" carriers such as Qwest that serve particularly high-cost rural areas. Accordingly, the Task Force's call to abandon statewide averaging for "rural" carriers and in turn create a fund of more than $1.5 billion cannot be justified if the Commission continues to use statewide averaging to hold down support for "non-rural" carriers.

BACKGROUND

Section 254 of the Act directs the Commission to establish "explicit and sufficient" support for universal service, based on several key principles. 47 U.S.C. § 254(e). The federal support mechanism should ensure that (1) quality services are available at affordable rates; (2) advanced telecommunications and information services are available in all regions of the Nation; (3) consumers in rural, insular, and high-cost areas and those in urban areas have access to reasonably comparable services at reasonably comparable rates; (4) all carriers contribute to universal service on an equitable and nondiscriminatory basis; (5) there are specific and predictable federal and state support mechanisms; and (6) schools and libraries have access to advanced services. *Id.* § 254(b).

Notably, section 254 draws no distinction between "rural" and "non-rural" carriers. The statute specifies that "*every* telecommunications carrier that provides interstate telecommunications services" must contribute to the federal support mechanisms. *Id.* § 254(d) (emphasis added). It also sets forth the same eligibility requirements for "rural" and "non-rural" carriers' receipt of federal support. *See id.* §§ 214(e)(1)-(2); 254(e).

Moreover, regardless of whether they are classified as "rural" or "non-rural" under the Act, carriers that serve high-cost areas face equivalent burdens and, in turn, have similar needs.

The introduction of local competition has made implicit subsidies — which traditionally were the primary means of supporting universal service — unsustainable. If an incumbent LEC were to charge an inflated rate in a relatively low-cost area in order to subsidize service in a relatively high-cost area, competitors would quickly undercut the inflated price and leave the incumbent with a revenue shortfall.[2] Accordingly, a "non-rural" LEC that serves both urban and rural areas will be entirely dependent on explicit universal service funding to support its below-cost provision of service in high-cost rural areas, just as a "rural" LEC that serves only rural areas will be. In addition, many states with above-average costs are unable to raise sufficient explicit support for universal service, because they have few low-cost urban areas; and with respect to the urban areas that *do* exist in such states, the carriers serving such areas cannot be assessed a disproportionate share of the support burden, because the Act requires that contributions to *both* federal and state mechanisms be "equitable and nondiscriminatory." *Id.* §§ 254(d), (f). As a result of these various limitations, "rural" and "non-rural" carriers serving high-cost areas are similarly situated in that neither class can rely on implicit support and both are heavily dependent on the federal explicit support mechanisms.

The Commission nevertheless has taken a two-track approach to implementing the requirements of section 254 with respect to "rural" and "non-rural" carriers. For "non-rural" carriers, the Commission has established a support mechanism based on forward-looking costs. That mechanism provides support for all intrastate forward-looking costs — determined as a statewide average cost per line — that exceed a national cost benchmark. The forward-looking costs of providing local services are determined using the Commission's "Synthesis Model,"

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2 *See Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, CC Docket No. 96-45, ¶ 16 (rel. Nov. 2, 1999) ("*Ninth Order*").

which is a complex computer model that combines many different cost inputs using a series of algorithms. The national benchmark is set at 135 percent of the national average forward-looking cost per line (as determined by the Synthesis Model). Thus, a "non-rural" incumbent LEC will receive explicit federal support if the state in which the carrier operates has an average forward-looking cost per line that is more than 135% of the national average forward-looking cost per line.[3]

By contrast, the Commission has not yet adopted a new explicit support mechanism for "rural" carriers. Instead, it has continued to provide funding through the existing mechanisms, which calculate support based on historical costs, rather than forward-looking costs.[4] The existing "rural" mechanisms also calculate support payments by averaging costs at the study-area level (*i.e.*, the carrier's service area within the state), rather than at the statewide level.[5] The Task Force proposes to continue calculating support based on historical costs and study-area averaging, in stark contrast to the "non-rural" mechanism's use of forward-looking costs (in particular, the Synthesis Model) and statewide averaging. *See* Recommendation ¶¶ 17-21.

ARGUMENT

I. THE COMMISSION SHOULD CORRECT THE FLAWS IN THE SYNTHESIS MODEL AND USE THAT MODEL TO CALCULATE SUPPORT PAYMENTS FOR BOTH "RURAL" AND "NON-RURAL" CARRIERS.

Qwest agrees with the Task Force's determination that "the costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs" in rural areas. Recommendation at 18. Indeed, Qwest has sought judicial review of the model in

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3 *See generally id.*

4 *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶¶ 210-11; 47 C.F.R. § 36.631.

5 *See id.*

the Tenth Circuit on that basis, among others.[6] But the Commission's response to the serious flaws in the Synthesis Model should be to establish a properly functioning model for *both* "rural" and "non-rural" carriers, not to create a special exemption from the Synthesis Model for "rural" carriers. Disparate treatment of the two classes of carriers, which are fundamentally alike in pertinent respects would be arbitrary and capricious and would harm the competitiveness of "non-rural" carriers serving rural areas.

The defects in the Synthesis Model have nothing to do with whether the carrier serving a particular rural areas qualifies as a "rural" or "non-rural" carrier under the Act. The need for universal service support depends on the geographic characteristics of a carrier's service area, while the Act's definition of "rural telephone company" turns on the number of access lines served by a carrier, rather than geography. *See* 47 U.S.C. § 153(37).[7] As the Task Force acknowledged, "[b]oth Rural Carriers and non-Rural Carriers serve rural communities." Recommendation at 11. Indeed, *any* community served by a "rural" carrier just as easily could be served by a "non-rural" carrier.

Therefore, all of the flaws in the Synthesis Model apply equally to "non-rural" carriers — such as Qwest — that serve rural communities. For example, the Task Force finds that the Synthesis Model "tend[s] to underestimate lines" in most wire centers. *Id.* at 18. That finding

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6 *See Qwest Corporation v. FCC*, Nos. 99-9546 and 99-9547 (10th Cir. filed Dec. 10, 1999).

7 While its principal focus is on the number of lines served by a carrier, the definition of "rural telephone company" also requires that such an entity not provide service in "any incorporated place of 10,000 inhabitants or more" or any territory included in an "urbanized area, as defined by the Bureau of Census . . . ." 47 U.S.C. § 153(37). Like "rural" carriers, Qwest and other "non-rural" LECs serve myriad communities that have fewer than 10,000 inhabitants and include no "urbanized areas." The difference between these "non-rural" LECs and "rural" LECs is that the latter serve *only* such areas.

necessarily means that the model will underestimate the line counts not only for a "rural" carrier, but also for a "non-rural" carrier serving geographic areas similar to those analyzed by the Task Force. Because line counts are a pivotal factor in the calculation of support payments, this defect alone suggests that "non-rural" LECs such as Qwest that serve rural communities are receiving insufficient support from the "non-rural" support mechanism. While a few of the flaws identified by the Task Force indicate a slight overstatement of costs, collectively they strongly reinforce the conclusion that "non-rural" LECs are being denied sufficient support. Other flaws that distort costs in a downward direction include:

- the model's underestimation of buried plant;
- the "significantly underestimated" calculation of wire center area, by as much as 90 percent; and
- the "significantly underestimated" calculation of central office equipment switching investment.

Id.

The Task Force's finding that the Synthesis Model is incapable of yielding reasonable estimates of forward-looking costs in sparsely populated geographic areas is a powerful indictment of the Commission's reliance on that model as the basis for the non-rural support mechanism, because "non-rural" LECs such as Qwest are no less likely than "rural" carriers to serve such areas. The Task Force's conclusion that "the current model is not an appropriate tool for determining the forward-looking costs of Rural Carriers," *id.*, applies with equal force to "non-rural" carriers serving comparable areas. Accordingly, when the Task Force says that it did "not intend to imply in any way that revisions are needed to support mechanisms for non-Rural Carriers," *id.*, it ignores the weight of its own analysis. If the model cannot function accurately enough to be used in the "rural" support mechanism, then it is inadequate for use in the "non-rural" mechanism as well, because the costs of serving the very same types of geographic areas must be calculated for both mechanisms.

Exempting "rural" carriers from the distortive effects of the Synthesis Model, while forcing "non-rural" carriers serving the same types of geographic areas to live with those flaws, would be arbitrary and capricious. *See, e.g.*, *FEC v. Rose*, 806 F.2d 1081, 1088 (D.C. Cir. 1986) ("[A]n agency's unjustifiably disparate treatment of two similarly situated parties works a violation of the arbitrary-and-capricious standard."); *Etelson v. Office of Personnel Management*, 684 F.2d 918, 926 (D.C. Cir. 1982) ("Government is at its most arbitrary when it treats similarly situated people differently."). Such disparate treatment also would undermine the important principle of competitive neutrality. The Commission therefore should reject the Recommendation.

The Commission's response to the problems with the Synthesis Model identified by the Task Force should instead be to commence as promptly as possible a proceeding to correct the flaws in the model. Doing so would address the prejudice to the "non-rural" carriers that are *already* receiving inadequate support as a result of that flawed model. Turning a blind eye to underfunded "non-rural" carriers, as the Task Force recommends, *see* Recommendation at 18, cannot be justified under the banner of "rural" carriers' special needs. Because the Synthesis Model fails to yield reasonable cost estimates in rural areas irrespective of whether such areas are served by a "rural" or "non-rural" carrier, the statutory distinction between the two categories of carriers — which has nothing to do with how "rural" a carrier's service territory is — does not warrant denying "non-rural" carriers the same level of support in rural areas.

II. THE COMMISSION SHOULD ABANDON STATEWIDE COST AVERAGING FOR BOTH THE "RURAL" AND "NON-RURAL" SUPPORT MECHANISMS AND THEREBY PROVIDE SUFFICIENT SUPPORT TO ALL CARRIERS.

Qwest also agrees with the Task Force that the use of statewide averaging would deny "rural" carriers sufficient universal service support. *See* Recommendation at 19. But that assessment applies equally to the use of statewide averaging for the "non-rural" support mechanism. Just as the Commission should create a uniform cost model, so too it should choose a consistent approach to the geographic level at which a carrier's costs should be averaged, because the consequences of whatever choice is made are substantially the same for each class of carriers.

Statewide averaging masks the need for support in high-cost areas because it blends those costs together with the low costs associated with the more densely populated areas of a state. As the Task Force found, "averaging the cost of Rural Carriers with the costs of all other carriers within a state would eliminate funding for many Rural Carriers." Recommendation at 19. While this statement is correct, it is potentially misleading. In fact, the elimination of funding would result not from averaging "rural" carriers' costs with the costs of all *other carriers*, but rather from lumping together the "rural" carriers' *high-cost areas* with the *low-cost areas* of the state, *regardless of whether other carriers serve those areas*.

As an initial matter, "non-rural" carriers may face the same predicament identified by the Task Force if they serve only relatively high-cost areas within a state: Under the "non-rural" support mechanism, these carriers' costs would be averaged with the costs of the lower-cost carriers in the state, just as a "rural" carrier's costs would be. For example, "non-rural" carrier Pacific Bell serves many high-cost areas in Nevada, but does not serve Las Vegas. Its costs are nevertheless determined on a statewide-average basis, even though that methodology understates its need for support. In any event, it does not matter which carrier — the one serving the high-cost areas, or some other carrier — serves the low-cost areas of a state: Either way, statewide averaging will mask the need for funding in the high-cost areas and, as a result, yield insufficient support.

It is no answer to say that, where a large LEC serves most of the state, it can transfer surplus funds from its low-cost areas to support affordable service in high-cost areas. That would simply perpetuate the sort of *implicit* subsidy flow that, as Congress and the Commission have recognized, competition makes unsustainable.[8] For example, the fact that Qwest provides service in Cheyenne is irrelevant to its need for support in a remote high-cost community in rural Wyoming. Qwest cannot generate "surplus" funds from Cheyenne customers, because new entrants would undercut Qwest's artificially inflated rates there (assuming the state commission would even approve such rates), thereby leaving Qwest with a choice of losing its customers or swallowing its losses. Like any "rural" carrier, Qwest thus requires substantial federal support to provide affordable service in its highest-cost areas, and the Commission's use of statewide averaging drastically diminishes the available funding.

Moreover, to the extent that the Commission is relying on states to supply sufficient *explicit* support to compensate for the effects of statewide averaging, its proposal is untenable because states with high costs and highly variable costs, such as Wyoming, are simply unable to meet this burden.[9] And whatever explicit support states can muster is likely to flow disproportionately to "rural" carriers, rather than "non-rural" carriers, if the Task Force is correct

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[8] *See* 47 U.S.C. § 254(e) (requiring that support for universal service be "explicit"); *Ninth Order* ¶ 16 (rel. Nov. 2, 1999) (explaining how competition makes implicit support unsustainable); *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 393 (1999) (the Act requires the elimination of implicit support).

in its assertion that "rural" carriers have higher average costs. Therefore, if statewide averaging is inappropriate for a "rural" support mechanism, it is no more appropriate for the existing "non-rural" mechanism.

The size of the "rural" fund proposed by the Task Force vividly illustrates the arbitrariness of subjecting "non-rural" carriers — but not "rural" carriers — to statewide cost averaging. The Task Force notes that current support for "rural" carriers totals more than $1.5 billion, and would only increase under the recommended approach, because the Task Force proposes replacing the existing cap on high-cost loop support with a more generous mechanism. *See* Recommendation at 19-30. By contrast, if statewide averaging were employed, the "rural" fund would shrink to $451 million, less than one-third its current size. *Id.* at 19. Whereas the Task Force accordingly recommends eschewing statewide averaging in order to achieve full support for "rural" carriers, the Commission has used statewide averaging to limit "non-rural" carriers' support to a mere $260 million (excluding support for the Puerto Rico Telephone Company); that amount will be even lower after the planned elimination of "hold harmless" support.[10] "Non-rural" carriers would receive several times the current support payments if statewide averaging were replaced with a more granular approach that did not cancel out the high-cost areas of a state by blending them with the low-cost areas. Because "non-rural" carriers serving high costs areas are as dependent on federal support as "rural" carriers, the Commission should apply any reforms adopted as a result of the Task Force's Recommendation to both the

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9 *See Petition for Reconsideration of the Ninth Report & Order and Eighteenth Order on Reconsideration of the Wyoming Public Service Commission*, CC Docket No. 96-45 (filed Dec. 30, 1999).

10 *See Common Carrier Bureau Releases Estimated State-by-State Universal Service High-Cost Support Amounts for Non-Rural Carriers*, Public Notice, DA 00-774, CC Docket No. 96-45 (rel. Apr. 7, 2000).

"rural" and "non-rural" mechanisms to avoid creating an arbitrary regime that creates a competitive disparity.

CONCLUSION

For the foregoing reasons, the Commission should fix the Synthesis Model and use it for both support mechanisms, rather than simply exempting "rural" carriers from the harmful effects of the flawed model. Likewise, the Commission should abandon statewide averaging for both mechanisms, not just for the new "rural" mechanism.

Respectfully submitted,

/s/ John H. Harwood II

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November 3, 2000

CERTIFICATE OF SERVICE

I, Matthew A. Brill, hereby certify that, on November 3, 2000, I caused to be served on the parties listed below, by first-class mail (or by hand delivery, where indicated by an asterisk), the foregoing Comments of Qwest Corporation on the Rural Task Force Recommendation.

/s/ Matthew A. Brill
____
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